

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Request for Review by)	
Denver Public School District of)	WC Docket No. 02-6
Decision of Universal Service Administrator)	
)	

Request for Review of Universal Service Administrative Company Decisions

I. Introduction

Denver Public School District (“DPS” or “District”) through its undersigned counsel, and pursuant to Section 54.719 of the Rules of the Federal Communications Commission (“FCC” or the “Commission”), 47 C.F.R. § 54.719, seeks FCC review of eight Universal Service Administrative Company (“USAC”) Administrator’s Decisions on Appeal regarding Funding Commitment Decision Letters (“FCDLs”)¹ dated August 20, 2018 for Funding Years (“FY”) 2011, 2012, and 2013 (together, “Appeal Denial”) and waiver of applicable Commission competitive bidding rules, 47 C.F.R. §§ 54.503(b), (c); 54.511(a); 54.516(a).

Denver Public Schools serves over 90,000 students from diverse socio-economic and linguistic backgrounds. The overall vision of DPS is that *Every Student Succeeds*. In the past six years, DPS dramatically expanded preschool and kindergarten opportunities, posted record enrollment increases, drove the highest rate of student progress of any major district in the state, increased the graduation rate by 23 percentage points, and cut its dropout rate in half. These

¹ See Attachments 5A at 71; 5B at 82; 5C at 93; 5D at 104; 6 at 114; 7A at 126; 7B at 137; 7C at 148, Administrator’s Decision on FCDLs (Aug. 20, 2018).

successes could not have been possible without the initiatives that the E-rate program supported. Over the years, the E-rate program has funded many initiatives in DPS, making telecommunications and information services more affordable for its schools and the students served. One of the more recent examples of an E-rate reimbursed initiative is the DPS fiber network. This network was installed across the District, providing reasonably priced internet access to over 90 thousand students and approximately 15 thousand employees. In addition to the fiber network, E-Rate reimbursements have allowed DPS to install a robust wireless network throughout the district connecting all wireless users to 7,731 wireless access points.

On February 26, 2013, DPS discovered, and self-reported to USAC, alleged improprieties of a bad actor formerly employed by the District, Bud Bullard.² Mr. Bullard was employed by DPS in the role of Director, Network & Systems Administration in the DPS Department of Technology Services (“DoTS”). On learning of the potential improprieties, the District immediately placed Mr. Bullard on leave and retained Alvarez & Marsal Global Forensic and Dispute Services, LLC (“A&M”) to fully investigate and provide recommendations that would strengthen the District’s procurement process. Based on the investigation’s findings, Mr. Bullard was terminated.³ During the investigation, DPS discovered that some of its past procurement practices failed to meet standards set by the Commission however, they did not appear to have been unfairly or inappropriately influenced by the actions of Mr. Bullard. Since 2013, the

² See Attachment 9, Letter from Denver Public Schools Office to Associate General Counsel of the Universal Service Administrative Company at 206-207 (Feb. 26, 2013).

³ Attachment 1, Letter from Denver Public Schools Office of the General Counsel to Vice President of the Schools and Libraries Division of USAC at 5 (Sept. 25, 2015). The A&M Report was completed in June 2013. The Report is attached as Attachment 8, Exhibits to the Report is available for review from DPS. In its Report, A&M focused on DPS FY 2010, 2011, 2012, and the first half of FY 2013. A&M notes that allegations against Mr. Bullard include “improper receipt of value from persons or companies doing business with DPS, such as meals, a vehicle at a reduced price, trips, tickets, and suites to sporting events; and, the steering of contracts to certain preferred vendors.” Attachment 8 at 155.

District has implemented recommendations in the A&M Report, and adopted additional safeguards in the procurement process for both E-rate and non E-rate solicitations. DPS also retained CSM Consulting, Inc. (“CSM”) as special advisors to assist with day-to-day aspects of E-Rate compliance including application, monitoring, and reporting processes.⁴ DPS has worked with CSM since 2013 to overhaul the District procurement process to follow the best practices outlined in the Commission’s Rules and Regulations.⁵

Even after self-reporting, on May 24, 2018, USAC informed DPS by Revised FCDLs it is denying funding to applications with Funding Request Numbers (“FRNs”) 2173158, 2173316, 2173438, and 2114845.⁶ USAC notified DPS that the basis for the denial was (1) FCC rules require applicants to retain all documents regarding the competitive bidding process and DPS failed to provide all bid and vendor evaluation documents when requested in violation of 47 C.F.R. § 54.516(a)-(b); and (2) for all FRNs from FY 2011, except for FRN 2114845, the Form 470 associated with the FRNs that established competitive bidding did not include the type of service requested in the FRN, cellular phone service, violating the FCC’s competitive bidding requirements, 47 C.F.R. §§ 54.503; 54.511.⁷

In a separate RFCDL dated May 29, 2018, USAC denied FY 2012 funding request number 2287057 because it alleged that DPS did not retain and could not provide all documentation regarding the competitive bidding process related to the FRN, in violation of 47

⁴ See Attachment 1 at 6.

⁵ For more information on DPS’s commitment to overhauling its procurement practices, please review Attachment 1 at 17-24.

⁶ See Attachments 5A at 64-67; 5B at 75-78; 5C at 86-89; 5D at 97-100.

⁷ See Attachments 5A at 71-72; 5B at 82-83; 5C at 93-94; 5D at 104-105, Revised Funding Commitment Decision Letters (May 24, 2018).

C.F.R. § 54.516(a)-(b).⁸ In a series of RFCDLs dated May 31, 2018, USAC also denied funding associated with FY 2013 FRNs 2399580, 2400707, and 2410602.⁹ USAC alleged that DPS did not retain and could not provide all documentation regarding the competitive bidding process related to these FRNs, also in violation of 47 C.F.R. § 54.516(a)-(b). USAC's RFCDL decisions were related to the applications below:

Funding Year	Funding Request Number	Form 471 Application	Original Commitment Request	Form 470 Application Number
2011	2173158	782885	\$205,305.60	715350000884545
2011	2173316	782862	\$284,784.00	715350000884545
2011	2173438	782907	\$6,676.99	715350000884545
2011	2114845	775967	\$32,360.83	715350000884545
2012	2287057	840695	\$194,481.26	892360000943612
2013	2399580	878975	\$29,250.40	730260001044555
2013	2400707	879969	\$238,153.73	730260001044555
2013	2410602	885621	\$204,225.12	730260001044555

DPS timely appealed USAC's initial determinations and was informed by letter on August 20, 2018 that the appeals had been denied.¹⁰ Consequently, DPS now timely files¹¹ this request for

⁸ See Attachment 6 at 107-109; 114-115.

⁹ See Attachments 7A at 119-121; 7B at 130-132; and 7C at 141-143.

¹⁰ See Attachments 5A at 71; 5B at 82; 5C at 93; 5D at 104; 6 at 114; 7A at 126; 7B at 137; 7C at 148.

¹¹ See 47 C.F.R. § 54.720 (stating that an affected party asking for waiver or requesting review of an Administrator's decision must file a request within 60 days from the date the decision is issued).

review of the Administrator's decisions and seeks a limited waiver of applicable competitive bidding rules.¹²

USAC denied funding for requests noted in the table above because it alleges that DPS violated the FCC's competitive bidding requirements. In requesting E-Rate funding from USAC, DPS acted in good faith based on its understanding of the Commission's competitive bidding rules and associated USAC guidance. DPS believed at the time that it was only required to issue FCC Form 470s ("Form 470") for month-to-month cellular phone services without any further Request for Proposals ("RFPs").¹³ DPS's Form 470 practice was to specify it required "Telephone Services" for 151 sites, and the District believed the "Telephone Service" designation was enough for eligible telecommunications providers to have the requisite information needed to submit competitive bids for all types of "Telephone Service", including cellular phone services; it was not DPS's normal practice to submit any RFPs for the services.¹⁴ USAC did not challenge the use of "Telephone Service" used in Form 470s associated with

¹² DPS asks for a limited waiver of the following rules: 47 C.F.R. §§ 54.503(b), (c); 54.511(a); 54.516(a).

¹³ See Attachment 2, FCC Form 470 FY 2011, Application Number 715350000884545, at 40-41; Attachment 3, FCC Form 470 FY 2012, Application Number 892360000943612, at 50-51; Attachment 4, FCC Form 470 FY 2013, Application Number 730260001044555, at 59; see also *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Chickasaw Regional Library System*, File No. SLD-142924, 17 FCC Rcd 683, 685 (Com. Car. Bur. 2002) ("An applicant seeking funding for month-to-month services from a provider must submit the service for competitive bidding even if it is a continuation of a service that was bid in the previous year."); *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Dickenson Cty. Pub. Schs.*, File No. SLD-239477, 17 FCC Rcd 9410, (Wireline Competition Bur. 2002) (holding that month-to-month services received in one funding year cannot be supported by a reference to an FCC Form 470 from the previous year.).

¹⁴ "Telephone Service" was defined as "communication that takes place using the public switched telephone network" and included "wireless telephone services, e.g., cellular service" USAC, *Eligible Services List: Schools and Libraries Support Mechanism for Funding Year 2011* at 3-4 (Sept. 23, 2010), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf; see also USAC, *Schools and Libraries: Universal Services Support Mechanism Eligible Services List for Funding Year 2012* at 5 (Sept. 28, 2011) (same), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf; USAC, *Schools and Libraries Universal Service Support Mechanism: Eligible Services List* at 5 (Sept. 27, 2012), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2013.pdf.

FRNs 2114845 (FY 2011); 2287057 (FY 2012); 2399580 (FY 2013); 2400707 (FY 2013); or 2410602 (FY 2013).

For the FY 2011 Form 470 application Number 715350000884545, and FY 2012 Form 470 application Number 892360000943612, no service provider actually submitted a response. There were no further bidding documents to provide to USAC. Instead, DPS used the existing service provider bills and invoices as a response to the Form 470s, and submitted their Form 471s and funding requests after the required 28-day Form 470 period expired. This was, and still is, an allowable method of selecting a service provider to deliver eligible services on a month-to-month basis when no actual ‘responses’ are received for a request for services.¹⁵

For the FRNs associated with FY 2013 Form 470, Application Number 730260001044555, DPS officials mistakenly checked Item 8(a) in Block 2, designating that an RFP was available for its request for Telephone Services. No such RFP existed, and under Mr. Bullard, it was not DPS’s common practice to release supplemental RFPs outside of a Form 470 for Telephone Services. As with FY 2011 and 2012 Form 470s, no service provider submitted a response for cellular telephone services, so there were no further competitive bidding documents to provide to USAC. Instead, DPS used existing bills and invoices from service providers as a response to the FY 2013 Form 470. In the instances above, DPS believed it was fully compliant with federal and state law.

Since the self-reporting of the concerns raised during the investigation of Mr. Bullard’s activities in 2013, DPS worked with auditors from USAC and hired CSM to revamp its E-Rate

¹⁵ See, e.g., USAC, *The E-Rate Program: Road to Success Fall 2011 Applicant Trainings* at 26 (2011) (stating that there may be no bids, and that an existing contract can be used as a bid response to the posted Form 470), available at <https://www.usac.org/res/documents/sl/training/2011/2011-sl-fall-Road-to-Success.pdf>; see also USAC, *Step 2: How to Select a Provider* (“If you did not receive any bids, you can solicit bids. If you currently receive service from a service provider, you can ask your current provider to submit information in response to your FCC Form 470.”), available at <https://www.usac.org/sl/applicants/step02/default.aspx>.

competitive bidding processes. Unfortunately for DPS, Mr. Bullard was the sole employee capable of providing additional information needed to demonstrate compliance with FCC rules associated with Forms 470 for 2011 through 2013. Equally as unfortunate for DPS, Mr. Bullard has not and will not cooperate with DPS to provide any additional information. Considering its actions to rectify its past deficiencies and to comply with the Commission's current requirements, and in light of its inability to secure cooperation from Mr. Bullard to provide any additional information, DPS respectfully requests that the FCC review the Administrator's decisions and if appropriate, provide a limited waiver of applicable competitive bidding rules, and direct USAC to fund the commitment requests above.

II. Argument

A. The Equities Strongly Support a Waiver

The FCC may waive its rules if there is good cause to do so and may exercise discretion to waive a rule where strict compliance would be inconsistent with the public interest.¹⁶ In determining whether a waiver should be granted, the FCC must determine whether a waiver is in the public interest and apply a rational standard to determine whether the circumstances are sufficiently unique to depart from the general rule.¹⁷

The FCC has stated that "recovery may not be appropriate for violation of all rules regardless of the reason for codification."¹⁸ Further, where an entity believes there are reasons

¹⁶ See *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) vacated in part by *Saco River Cellular v. FCC*, No. 93-1423, 1997 U.S. App. LEXIS 19007 (D.C. Cir. June 5, 1997)).

¹⁷ *N. Am. Catholic Educ. Programming Found. V. Sandridge*, 800 F. Supp. 2d 239, 246 (D.D.C. 2011) (stating that agencies must use more than a "we-know-it-when-we-see-it standard" in determining whether a waiver should be applied).

¹⁸ Schs. & Libraries Universal Serv. Support Mechanism, FCC 04-190, 19 FCC Rcd. 15808 15,815 ¶ 19 (2004) ("Fifth Report and Order").

why recovery for a rule violation is inappropriate, the Commission allows the party “to present such information in seeking review of USAC’s decision to recover monies, pursuant to Section 54.722.”¹⁹

If the FCC cannot see a path to approve our appeal, DPS requests a limited waiver of competitive bidding rules related to the aforementioned FRNs because of the unique circumstances presented by DPS which, in an attempt to insure compliance with all FCC rules, self-reported a potential concern in an effort to be fully transparent. DPS acted in good faith with USAC and with the FCC and asks for a waiver of relevant competitive bidding rules because a denial of funding requests for the outstanding FRNs, given the present circumstances, would be inappropriate and would not serve the public interest.

B. DPS Has Completely Revamped its E-Rate Process

Since the self-reporting in 2013, DPS completely revamped its E-Rate Process as well as implemented much stronger internal controls. DPS reviewed its procurement policies and procedures to ensure compliance with DPS and federal procurement guidelines. DPS began regularly training DOTs employees on these procurement policies, which are particularly important for E-rate contracts.

DPS also implemented the use of a standard evaluation matrix, based on the USAC sample points-based bid evaluation matrix, for each round of scoring by evaluators. DPS ensured that the standard matrix at a minimum includes the following criteria:

The cost of E-rate eligible goods/services factor is weighed higher than any other individual factor.

The factors and corresponding weights are consistent through subsequent rounds of evaluation.

¹⁹ *Id.* at ¶29.

The total points assigned to each factor, each bidder's (service provider's) total points, as well as a breakdown by factor, are clearly presented in the matrix. A second layer of information provides how each evaluator scored the bidder.

Training based on USAC-provided guidance is now mandatory for all staff involved with the procurement process, all staff involved in the bidding process, and to all staff who serve as evaluators. DPS has evaluation staff, and other staff relevant to the E-Rate process, attend formal Colorado Department of Education (CDE) E-Rate training sessions. In addition, DPS's E-Rate vendor, CSM, provides training via webinars. Evaluation team members also receive in-house training from the district E-Rate Coordinator and subject matter experts from the Strategic Sourcing department.

Employees also receive refresher training each year, highlighting any changes in guidelines from the past year.

A DPS Purchasing Department representative ensures at the beginning of the RFP process, everyone on the procurement team is operating from the same guidelines by briefly providing an overview of procurement guidelines.

DPS also clearly identifies and documents the individuals involved in the evaluation process, including their names and titles. In addition, DPS determines the factors and corresponding weights for evaluation, identifies and documents whether there is or may be potential conflicts of interest, seeks approval or guidance from Counsel's office, and documents any deviations from the usual procurement process. DPS retains meeting notes, attendee lists, and any resulting documents as part of the procurement process record retention.

DPS now has strong systems in place to retain all vendor selection documentation, including: winning and losing bids, correspondence, memos, bid evaluation documents, etc.

DPS created a shared drive system where all procurement files are organized into folders that can be accessed.

DPS also adopted a new procurement system (Lawson), which streamlined and modernized the procurement process. Lawson transitioned many of the manual, paper processes like vendor submission of proposals to digital processes. Accompanying the implementation of the new system was training for Purchasing Department employees as well as the creation of new online training materials.

Finally, DPS implemented an anonymous hotline whereby individuals can report fraud, waste, and abuse.²⁰ Complaints submitted through this hotline are reviewed and investigated by the DPS Internal Audit Department.

C. Funding Should Not be Withheld from DPS Because of Ministerial Shortcomings in Form 470-Based Bidding.

USAC denied funding for all eight FRNs without considering the special circumstances present that were associated with Mr. Bullard's impact on DPS's E-Rate process from FY 2011-2013. Mr. Bullard was and is the sole source of certain information requested by USAC. Though DPS has substantially revamped its E-Rate processes and worked with USAC and CSM to become compliant with Commission Rules and Regulations, it cannot deliver information that does not exist. DPS respectfully asks for a limited waiver of applicable Commission competitive bidding rules.

1. No RFP Was Issued for Cellular Services for FRNs 2173158, 2173438, 2114845, 2173316

In denying funding related to FRNs 2173158, 2173438, 2114845, and 2173316, USAC focused on whether DPS followed competitive bidding rules applicable to FY 2011 in submitting

²⁰ Individuals can report concerns through the attached link:
<https://integrareport.bkd.com/Lists/IntegraReporting/NewFormCust.aspx>.

requests for reimbursements tied to cellular phone service. USAC alleges (1) DPS did not provide bid and vendor evaluations related to cellular service, and the District therefore violated FCC rules that require applicants to retain all documents regarding the competitive bidding process; and (2) except for FRN 2114845, the Forms 470 associated with the FRNs did not include the specific type of service requested in the FRN, that is, cellular phone service, and did not include a complete description of the services required, thus violating the FCC's competitive bidding requirements, 47 C.F.R. §§ 54.503; 54.511.²¹

On the Form 470s, DPS's past practice was to specify in Item 8(c) that it required "Telephone Services" for 151 sites and that providers could competitively bid on Telephone Services, including cellular services. DPS believed it was satisfying both 47 C.F.R. §§ 54.403 and 54.511. At the time, the District reasonably believed the "Telephone Service" designation was enough for eligible telecommunications providers to have the requisite information needed to submit competitive bids for the cellular phone services. It was not DPS practice to issue RFPs for the services.²² DPS believed that by not issuing an RFP for the services, it would indicate to potential providers that they could solicit the business from individual departments within the school.²³ Notably, USAC is inconsistent in its reason to deny funding for FY 2011 FRNs –

²¹ See Attachments 5A at 71; 5B at 82; 5C at 93; 5D at 104.

²² "Telephone Service" was defined as "communication that takes place using the public switched telephone network" and included "wireless telephone services, e.g., cellular service" USAC, *Eligible Services List: Schools and Libraries Support Mechanism for Funding Year 2011* at 3-4 (Sept. 23, 2010), available at https://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf; see also USAC, *Schools and Libraries: Universal Services Support Mechanism Eligible Services List for Funding Year 2012* at 5 (Sept. 28, 2011) (same), available at https://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf; USAC, *Schools and Libraries Universal Services Support Mechanism: Eligible Services List* at 5 (Sept. 27, 2012), available at https://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2013.pdf.

²³ See, e.g., USAC, *The E-Rate Program: Road to Success Fall 2011 Applicant Trainings* at 26 (2011) (stating that there may be no bids, and that an existing contract can be used as a bid response to the posted Form 470), available at https://www.usac.org/_res/documents/sl/training/2011/2011-sl-fall-Road-to-Success.pdf; see also USAC, *Step 2: How to Select a Provider* ("If you did not receive any bids, you can solicit bids. If you currently receive service

USAC does not allege that funding should be denied for FRN 2114845 even though the FRN was part of the same Form 470 as FRNs 2173158, 2173438, and 2173316, and the services were also described as “Telephone Service”.²⁴ This inconsistency demonstrates that confusion regarding how to sufficiently categorize wireless services was widespread.

For the FY 2011 Form 470, Application Number 715350000884545, no telecommunications service providers provided bids. USAC alleges that DPS failed to retain competitive bidding documents for ten years from the last date of service and failed to provide the documents on request: however, there *were no additional* DPS competitive bidding documents related to the FY 2011 Form 470 beyond the Form 470 itself. The person that would have been knowledgeable on whether any service providers submitted bids, Mr. Bullard, is no longer communicating with DPS. After Mr. Bullard was terminated, DPS retained Mr. Bullard’s email correspondence and performed exhaustive searches to determine whether vendors submitted any bids to offer cellular telephone service. From the review, it was clear that an RFP for cellular telephone services was not released for FY 2011, and there were no indications that any vendor responses existed with regard to cellular telephone services. As a result, DPS contends it did not violate 47 C.F.R. § 54.516 because the properly filed Form 470 was the only competitive bidding document for cellular phone services for the year in question.

from a service provider, you can ask your current provider to submit information in response to your FCC Form 470.”), available at <https://www.usac.org/si/applicants/step02/default.aspx>.

²⁴ Compare Attachment 5D at 104-105 Administrator’s Decision on Appeal for FRN 2114845 (asserting that funding should be denied because DPS failed to retain and provide competitive bidding documents); *with* Attachment 5A at 71-72, Administrator’s Decision on Appeal for FRN 2173158, Attachment 5B at 82-83, Administrator’s Decision on Appeal for FRN 2173316, and Attachment 5C at 93-94, Administrator’s Decision on Appeal for FRN 2173438 (asserting that funding should be denied because (1) documents were not retained for 10 years and provided when requested; and (2) DPS failed to provide a complete description of the services for which discounts are sought).

Instead of competitive bid responses to an RFP, DPS used bills and invoices from incumbent providers as a response to the Form 470. Under Mr. Bullard, DPS adopted a policy where each division seeking cellular phone services could retain a service provider of its choosing on a month-to-month basis, and the incumbent vendor continued to provide the specified services. DPS could not provide competitive bidding documents to USAC because there were no such documents. The Form 470 stated that an RFP for cellular telephone services would not be provided.

In Funding Year 2011, DPS reasonably believed its Form 470 was sufficiently detailed to support funding for month-to-month cellular phone services. There is no evidence of waste, fraud or abuse associated with the FRNs in question. Instead, the deficiencies noted by USAC amount to a simple misunderstanding of the complex and often ambiguous ESL language that included ‘cellular service’ in the same “category” as Telephone Service. DPS respectfully requests the Commission consider the effect of Mr. Bullard’s past errors, grant a limited waiver of the FCC competitive bidding rules, and direct USAC to fund the associated FRNs.

2. No RFP Was Issued for Cellular Services Related to FRN 2287057.

USAC denied funding commitments related to FRN 2287057, alleging DPS did not retain and could not provide all documentation regarding the competitive bidding process related to the FRN, violating 47 C.F.R. § 54.516.²⁵ Similar to FY 2011 FRNs, DPS did not violate FCC requirements because there were no competitive bidding documents to provide to USAC.

DPS had no further bid and vendor evaluations to provide to USAC related to cellular phone services. In Section 8(b) of the related Form 470²⁶, DPS informed vendors that it would

²⁵ See Attachment 6 at 114-115.

²⁶ See Attachment 3 at 50-51.

not release an RFP for cellular telephone services. On the Form 470s, DPS practice was to specify in Item 8(c) that it required “Telephone Services” for 151 sites, and that providers could competitively bid on Telephone Services, including cellular services. DPS believed it was satisfying both 47 C.F.R. §§ 54.403 and 54.511. For the FY 2012 FRN, it appears that USAC agrees with DPS that requesting “Telephone Services” was specific enough for providers to submit competitive bids.

DPS has no such competitive bidding documents related to the FY 2012 Form 470. After Mr. Bullard was terminated, DPS performed exhaustive searches of Mr. Bullard’s email correspondence to determine whether vendors submitted any bids to offer cellular telephone service. From the review, DPS found that no RFP for cellular telephone services was released for FY 2012, and there were no indications that any vendor responses existed with regard to cellular telephone services. DPS followed a policy allowing each DPS division seeking cellular phone services to engage a service provider of its choosing on a month-to-month basis. Incumbent providers could continue to provide the specified services. DPS could not provide competitive bidding documents to USAC because there was no additional documentation regarding the competitive bidding process beyond the Form 470 that stated an RFP for cellular telephone services would not be provided.

3. No RFP Was Issued for Cellular Services Related to FRNs 2410602, 2399580, 2400707.

USAC denied funding commitments related to FRNs 2410602, 2399580, 2400707, alleging DPS did not retain and could not provide all documentation regarding the competitive bidding process related to the FRNs.²⁷ DPS stated in the relevant Form 470 that it would issue

²⁷ See Attachments 7A at 126; 7B at 137; 7C at 148.

an RFP, but DPS records are not available to show that DPS released an RFP for month-to-month services associated with the FRNs.²⁸

DPS respectfully requests the Commission grant a limited waiver of competitive bidding rules because DPS stating that it would release an RFP was likely a minor mistake. Checking of box 8(a) was likely a minor error, because it was not DPS practice to issue RFPs for the services.²⁹ DPS did file a Form 470, requesting bids from service providers for “Telephone Services.” After Mr. Bullard was terminated, DPS performed exhaustive searches of Mr. Bullard’s email correspondence to determine whether vendors submitted any bids to offer month-to-month services. From the review, DPS found no RFP for month-to-month services for FY 2013. No bids were submitted, and no RFP materials dealing with month-to-month services associated with the FRNs were released. There was no evidence of waste, fraud, abuse, misuse of funds, or failure to adhere to core program requirements – DPS believed it was following applicable competitive bidding rules.³⁰ As a result, FCC should waive the minor error on the FY 2013 Form 470 and direct USAC to fund the associated FRNs.

III. Conclusion

DPS respectfully requests that the Commission consider the effect of Mr. Bullard on past E-Rate processes and note his effect on any shortcomings in DPS processes. Under Mr. Bullard’s leadership, DPS’s E-Rate processes were deficient, and DPS fully recognized the

²⁸ See Attachment 4 at 59.

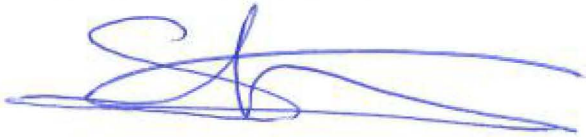
²⁹ See *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, File Nos. SLD-487170, et al., 21 FCC Rcd 5316, 5321 (2006) (holding that competitive bidding rules should be waived for minor filing errors where there was no evidence of waste, fraud or abuse, misuse of funds, or failure to adhere to core program requirements.).

³⁰ Compare with *In the Matter of Request for Review of a Descision of the Universal Service Administrator by Albert Lea Area Schools*, File No. SLD-517274, et al., 24 FCC Rcd. 4533, (Wireline Comp. Bureau 2009) (holding that the petitioners did not file a Form 470 or entered into agreements with a selected provider before posting a Form 470, and they did not seek competitive bids, in violation of 47 C.F.R. § 54.504).

issues as reported to USAC. DPS complied fully with USAC's investigations, along with employing CSM to fully revamp its competitive bidding processes to comply with Commission rules and regulations. Accordingly, DPS requests that the Commission grant a limited waiver of the FCC competitive bidding rules.

DPS requests that the Commission direct USAC to fund the associated FRNs due to DPS compliance with USAC audits and overall revamping of its competitive bidding procedures.

Respectfully submitted,



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